

Montana Fish, Wildlife & Parks

Reference Guide: Commercial Use Permits

Thank you for your interest in conducting commercial use on Montana Department of Fish, Wildlife & Parks (FWP) lands. Montana State Parks, Wildlife Management Areas and other FWP lands are treasured for their natural resources, scenic beauty, and historical significance. Some types of commercial use can help FWP to achieve its resource management goals and/or provide desired services to the public when properly managed. FWP requires a permit to conduct commercial use on FWP lands. This reference guide includes information to help you determine whether or not you meet the definition of commercial use (Part I), the types of permits and the permit fees (Part II), permit terms and compliance (Part III), and steps for acquiring a permit (Part IV). Please review this information carefully before applying for a permit. Please note that commercial use on FWP land is a privilege, not a right. Authorization may be denied, amended, or revoked at any time for cause. For more information about commercial use on FWP land please refer to Administrative Rules of Montana 12.14.101 through 12.14.170

PART I. DETERMINATION OF COMMERCIAL USE

What is the definition of commercial use?

A permit is required to conduct commercial use on FWP lands (State Parks, Fishing Access Sites and Wildlife Management Areas). Commercial use is defined as follows:

“*Commercial use*” means any person or entity that utilizes land under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person’s physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

What types of use are exempted from the definition of commercial use?

The following is a partial list of uses that are not considered commercial. For a more complete list please consult the FWP Commercial Use Rules.

- Transferring of vehicles or people to or from a FWP site
- Press or news media when photographing, filming, or reporting on activities on FWP land
- Fishing tournaments conducted by nonprofit organizations

PART II. COMMERCIAL USE PERMITS AND FEES

Fishing Access Site Permits

A Fishing Access Site (FAS) Permit is used to authorize water-based outfitting and guiding at FWP fishing access sites. This includes licensed and non-licensed outfitters and guides (e.g. fishing, whitewater rafting, canoeing). The FAS permit is an annual permit valid from March 1 – February 28.

Restricted Use Permits

A Restricted Use Permit is used to authorize 1) all commercial use occurring at State Parks and Wildlife Management Areas and 2) commercial use at Fishing Access Sites that is not water-based outfitting or guiding (e.g. equipment rentals). A Restricted Use Permit is also used to authorize water-based *outfitting* on restricted rivers: the Alberton Gorge, Beaverhead, Big Hole, Blackfoot, Madison and Smith rivers. A Restricted Use Permit is valid for the locations and time period specified on the permit. FWP may issue a permit for photography/filming (one-person crew) valid at all FWP sites for the calendar year.

Commercial Use Permit Fees

FWP charges a fee to conduct commercial use on FWP land. The fee is a way of compensating the public for conducting business on public land and helps to offset impacts on resources and facilities. The fees are used to manage commercial use and to improve and maintain sites and facilities. FWP may waive or adjust fees for some types of commercial use:

- Educational groups when the use is not primarily for recreational purposes.
- Commercial use when proceeds are donated to the maintenance, management, or the improvement or development of facilities, at the site where the use occurs.
- Commercial use when the service provider donates their services for a charitable cause and is not compensated for the service.
- Still photography and filming when the sole purpose of the use is to promote FWP land and resources.

The fee schedule includes a menu of fee systems. The menu of options enables FWP to cooperate with other state and federal agencies and allows FWP to select a fee system based on ease of administration and input from commercial users.

Primary Type of Use:	Fishing Access Site Permit Fee:	Restricted Use Permit Fee:
Water-based Outfitter: Angling	\$ 100 /year	A) 3% of unadjusted income; B) \$5 per client day conducted; or C) \$4 per allocated client day.
Water-based Outfitter: Non-angling	\$ 100 /year	A) 3% of unadjusted income; B) \$2 per client day conducted; or C) \$1 per allocated client day.
Water-based Guide	\$ 100 /year	N/A
Guided Tour or Trip	N/A	A) 3% of unadjusted income; or B) \$2 - \$10 per client day.
Special Events	N/A	A) \$10 - \$50 per day; or B) \$2 - \$10 per participant.
Vending	N/A	A) 3% of unadjusted income; or B) \$10 - \$50 per day.
Still Photography and Filming	N/A	1 person crew: \$25 per day or \$50 per year; 2 to 5 person crew: \$50 per day; 6 to 20 person crew: \$100 per day; 21 – 35 person crew: \$200 per day; 36 – 50 person crew: \$300 per day; 51 or more person crew: \$400 per day.
Non-service and Consumptive Use	N/A	\$10 - \$300 per day.

PART III. PERMIT TERMS AND COMPLIANCE

There are general terms and conditions that apply to all Restricted Use Permits. FWP may also identify special terms and conditions for individual sites. A person receiving a Restricted Use Permit agrees to abide by the terms and conditions listed below. Failure to comply may result in a citation and/or revocation of the permit.

1. Permittee must comply with all FWP rules and regulations.
2. The permittee shall ensure that all persons operating under the authorization have obtained all required Federal, State, and local licenses or permits. The permittee is responsible for ensuring that all agents of the permittee comply with the terms of the permit. The permittee shall make every reasonable effort to ensure compliance with these requirements by all clients, customers, participants, or spectators under the permittee's supervision.
3. This Restricted Use Permit is not a property right and no value shall be assigned to or claimed for the permit, or for the occupancy or use of federal and state lands or related waters granted thereupon. The permit privileges are not to be considered property on which the permittee shall be entitled to earn or receive any return, income, price or compensation. The use of a permit as collateral is not recognized by FWP. The permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the permittee shall notify the new owner that they are required to obtain a new permit.
4. All advertising and representations made to the public and the authorized officer must be accurate. Although the addresses and telephone numbers of the FWP may be included in advertising materials, official agency symbols may not be used. The permittee shall not use advertising that attempts to portray or represent the activities as being conducted by FWP. The permittee may not portray or represent the permit fee as a special State tax charged to the user. The permittee must furnish the authorized officer with any current brochure and price list if requested by the authorized officer.
5. The permittee will provide for the safety and well being of the public participating in the activity. This includes having adequate first aid and safety equipment on hand while performing the permitted activities.
6. In the event of default on any mortgage or other indebtedness, such as bankruptcy, creditors shall not succeed to the operating rights or privileges of the permittee.
7. The permittee must have a copy of the permit or other FWP-provided proof of authorization on their person or readily available for inspection by FWP staff.
8. The authorized officer, or other duly authorized representative of FWP, may examine any of the records or other documents related to the permit, the permittee or the permittee's operator, employee, or agent for up to 3 years after the expiration of the permit.
9. The permittee must notify the nearest FWP regional office within 24 hours of any observed hazards, safety problems, accidents or incidents.
10. FWP may require the permittee to possess and maintain a liability policy that names the State of Montana – FWP as additionally insured and provide FWP a copy of the Policy or Insurance Certificate prior to final approval of this permit. The minimum limits of liability insurance shall be determined based on the assessed risk of the activity and guidelines provided by the Risk Management and Tort Defense division of the Montana Department of Administration. A liability policy is not required for still photography and filming (one-person crew only).
11. The permittee and Independent Contractors providing services authorized by this permit must comply with State of Montana Worker's Compensation laws. This can be accomplished through purchasing a Worker's Compensation insurance policy, having an exemption under the law, or obtaining an Independent Contractor Exemption Certificate. Contact the Montana Dept. of Labor and Industry for specific details at 406-444-2840.
12. FWP reserves the right to put a permittee on probation; suspend or revoke a permit; refuse to issue a permit for subsequent years; and/or issue a Notice to Appear citation for reasons such as, but not limited to the following: Violation of FWP Commission and administrative rules, regulations or policies and/or failure to comply with terms, conditions, or stipulations of this permit.
13. Commercial use must not unduly conflict with existing use.
14. FWP reserves the right to alter the terms, conditions, or stipulations of a permit at any time for reasons such as significant policy changes, administrative procedure changes, stipulation changes, impacts to resource values, user conflicts, etc.

PART IV. APPLYING FOR A COMMERCIAL USE PERMIT

Applying for a FAS Permit

If you have internet access you can obtain the FAS permit on the FWP web site with a credit card. On the FWP home page (fwp.mt.gov), click on the link Online Services – Licenses and Applications. After entering the required information you will be presented with a list of permits that are available online. Scroll down until you see Commercial Use FAS Permit. You must provide your Montana Board of Outfitters license number if you are a licensed outfitter or guide. The FAS permit is also available at any FWP regional office and at businesses that sell FWP licenses and permits. You may also contact any FWP regional office and request a FAS Permit paper application. Mail the completed application and \$100 annual fee to the address on the application. Note: If you are a legal resident of Montana but do not have an FWP-issued Automated License Number you will need to apply for the FAS permit at a FWP Regional Office or external license provider and show proof of residency.

Applying for a Restricted Use Permit

To acquire a Restricted Use Permit you must submit a completed FWP Restricted Use Permit Application to the FWP Regional Office in which the site(s) is located (application includes a map showing the FWP administrative regions and corresponding addresses). Still photography and filming permits (one-person crew only) are available at any regional office or at FWP Headquarters in Helena. The deadline for submitting an application varies depending on where the use would occur. Upon receiving your application FWP will evaluate your request to determine

State Parks, Fishing Access Sites: Applications should be submitted a minimum of 10 days before the use is intended to occur.

Wildlife Management Areas: Applications must be submitted by March 1*. FWP may consider applications received after this date on a case-by-case basis. *For 2008 only: Applications may be submitted throughout the calendar year.

Restricted Rivers: Application deadlines vary. Contact FWP for more information.

Statewide Permit for Still Photography or Filming (one-person crew only): Applications may be submitted at any time. The permit is valid for the calendar year and expires on December 31.

Additional Resources

FWP Reference Guide: Commercial Use Permits for Still Photography and Filming
FWP Reference Guide: Commercial Use Permits for Water-based Outfitting and Guiding
FWP Commercial Use Rules and Fee Rule
FWP Web Site: fwp.mt.gov

Phone (406) 444-3888 or email csperry@mt.gov for more information on conducting commercial use on FWP land.